

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, et al.,

Case No. C70-9213RSM  
Subproceeding No. 17-3

**Plaintiff,**

V.

STATE OF WASHINGTON, et al.,

**ORDER DENYING MOTION FOR  
STATUS CONFERENCE**

**Defendant.**

This matter comes before the Court on Stillaguamish Tribe of Indians (“Stillaguamish”)’s Motion for Status Conference, Dkt. #327. Stillaguamish “requests this Court schedule a status conference to address procedures and develop a schedule for further proceedings in this case pursuant to the Ninth Circuit’s instruction.” *Id.* at 2.

An eight-day bench trial was held in this subproceeding in 2022. The Court heard live testimony and received exhibits and briefing from several parties.

The only legal issue at trial was whether the historical evidence and expert testimony, and all reasonable inferences drawn therefrom, demonstrate by a preponderance of the evidence that Stillaguamish customarily fished the Claimed Waters (including the waters of Deception

1 Pass, Skagit Bay, Penn Cove, Saratoga Passage, Holmes Harbor, Possession Sound, and Port  
 2 Susan) at and before treaty times. *See* Dkt. #257 at 2.

3 On December 30, 2022, the Court granted Upper Skagit Indian Tribe's Motion for  
 4 Judgment on Partial Findings under Rule 52(c), Dkt. #271. Dkt. #312. Stillaguamish appealed,  
 5 and the Ninth Circuit vacated and remanded. Dkt. #324. In its Opinion, the Ninth Circuit  
 6 stated that, although this Court "correctly applied the controlling law of *United States v.*  
 7 *Washington*," it "did not make sufficient factual findings to enable [the Ninth Circuit's]  
 8 review." *Id.* at 12. The Ninth Circuit found that Stillaguamish has already "set forth  
 9 considerable evidence bearing on the Tribe's history of fishing in the Claimed Waters." *Id.*

10 The Ninth Circuit stated:

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 12 We understand the district court's frustration with a proceeding  
 13 that reviews evidence already presented in proceedings held  
 14 anywhere from forty to ninety years ago—proceedings that  
 15 themselves collected data relating to events that must date to 1855  
 16 and earlier. We further recognize that the district court has  
 17 substantial knowledge and expertise concerning this case that  
 18 cannot be fully reflected in any single order it issues. The district  
 19 court has admirably overseen these sub-proceedings, which we  
 20 appreciate require considerable judicial resources.

21 At the same time, the district court's findings must be sufficiently  
 22 comprehensive to permit our meaningful appellate review. *See*  
 23 *Alpha Distrib. Co. of Cal.*, 454 F.2d at 453. The district court's  
 24 task in this sub-proceeding was to evaluate all the Tribe's  
 25 evidence—whether it had previously been considered in other  
 26 contexts or not—as it bears on the question of Stillaguamish's  
 27 U&As. As it is, we are left wondering what the district court made  
 28 of the extensive evidence before it.

29  
 30 *Id.* The majority opinion concluded by stating that "[w]ithout further insight into what facts the  
 31 district court took as established and what evidence it rejected, we cannot tell whether that  
 32 conclusion is correct as a matter of law." *Id.* at 3. The Court therefore vacated the order and

1 remanded “for further factual findings as to the Tribe’s evidence of villages, presence, and  
2 fishing activities in the Claimed Waters.” *Id.*

3 As the Court understands it, the Ninth Circuit is not remanding for further proceedings  
4 in the courtroom. The factual record is sufficient for the Court to issue an amended Order  
5 addressing what facts it took as established and what evidence it rejected so as to enable the  
6 Ninth Circuit’s review on appeal.  
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8 Accordingly, the Court hereby FINDS and ORDERS that Stillaguamish Tribe of  
9 Indians (“Stillaguamish”)’s Motion for Status Conference, Dkt. #327, is DENIED. The Court  
10 will review the existing record and issue a revised Order as set forth above.  
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12 DATED this 18<sup>th</sup> day of June, 2024.  
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15 RICARDO S. MARTINEZ  
16 UNITED STATES DISTRICT JUDGE  
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